

APR 28 1978

MICHAEL RODAK, JR., CLERK

APPENDIX

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No. 77-515

HOLT CIVIC CLUB, etc., et al.,

Appellants,

vs.

CITY OF TUSCALOOSA, etc., et al.,

Appellees.

On Appeal From
The United States District Court
For the Northern District of Alabama

Filed October 3, 1977
Jurisdiction Postponed March 6, 1978

INDEX*

	<u>Page</u>
Relevant Docket Entries	1
Cross Reference to District Court Memorandum Opinion of July 31, 1975	2
Cross Reference to the Court of Appeals Opinion of December 31, 1975	2
Amended Complaint	3
Motion to Dismiss	11
First Interrogatories and Answers	13
Second Interrogatories and Answers	22
Third Interrogatories and Answers	33
Cross Reference to District Court Order of June 7, 1977	41
Plaintiffs' Motion to Reconsider	42
Cross Reference to District Court Order of July 14, 1977	44

*Explanatory note. The complaint was amended several times and several motions to dismiss were filed (see relevant docket entries). The parties have designated the last amended complaint and last motion to dismiss. The complaint included herein was on file prior to the first appeal and the motion to dismiss included herein was filed on remand. Thus, the motion to dismiss which the single judge acted on is not reproduced but it is not significantly different from the motion which is included.

Excerpts from three sets of interrogatories and answers thereto have been included. These are grouped together and are reproduced with answers placed immediately after the corresponding interrogatory for clarity.

RELEVANT DOCKET ENTRIES

<u>Docket Entries</u>	<u>Date</u>
Complaint	Aug. 7, 1973
Interrogatories to Defendant	Aug. 16, 1973
Motion to Dismiss	Sept. 10, 1973
Interrogatory Answers	Sept. 26, 1973
Amendment to Complaint	Oct. 3, 1973
Motion to Dismiss (ad- ditional grounds)	Oct. 18, 1973
Order that the parties brief the propriety of a three-judge court, standing, class represen- tation and the existence of a substantial federal question	Oct. 30, 1973
Interrogatories to Defendant	May 13, 1974
Interrogatory Answers	June 6, 1974
Motion to Amend Complaint	July 22, 1974
Reassignment of grounds for motion to dismiss and ad- ditional grounds	Aug. 12, 1974
Order granting motion to amend complaint and directing response to motion to dis- miss	Aug. 22, 1974
Motion to dismiss of added defendants	Sept. 4, 1974
Memorandum opinion	July 31, 1975
Notice of appeal	Aug. 18, 1975
Opinion of the court of appeals	Dec. 31, 1975
Order designating court of three judges	Jan. 12, 1976
Interrogatories to Defen- dants	Jan. 29, 1976
Motion to Dismiss	Apr. 9, 1976
Order	June 7, 1977
Motion for Reconsideration	June 17, 1977

Docket Entries

Date

Order denying motion for reconsideration	July 14, 1977
Notice of Appeal	Aug. 5, 1977
Interrogatory Answers	Mar. 28, 1978*

OPINION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
July 31, 1975

This opinion is found in the jurisdictional statement appendix beginning at page 18a.

* * *

OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT
December 31, 1975

This opinion is found in the jurisdictional statement appendix beginning at page 10a.

* * *

* These answers were served on or about March 31, 1976, but apparently were not filed with the clerk. The three interrogatory answers included are essentially updates of previous answers already on file. Counsel for appellants sent a copy of the third interrogatories answers to the district court clerk and they were stamped filed on March 28, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

[Filed July 22, 1976]

HOLT CIVIC CLUB, an un-)
incorporated association,)
on behalf of its members;)
Jimmy Clements, Clyde)
Jones, Herbert Flora, Joe)
Perkins, Sr., William)
Gordon, Victoria Harris,)
Roy Johnson, Donald Lank-)
ford, individually, as) C.A. No.
representative members of) 73-M-736
the Holt Civic Club, and)
on behalf of all others)
similarly situated,)

PLAINTIFFS,)

VS.)

CITY OF TUSCALOOSA, a muni-)
cipal corporation, on be-)
half of all other municipal)
corporations in the State)
of Alabama; C. SNOW HINTON,)
C. DELAINE MOUNTAIN, and)
HILLIARD FLETCHER, indivi-)
dually, as members of the)
Tuscaloosa City Commission)
and on behalf of all munici-)
pal executive officers and)
legislative bodies in Ala-)
bama; and GORDON ROSEN,)
individually, as City Re-)
corder of Tuscaloosa, and)
on behalf of all other muni-)
cipal judges in Alabama,)

DEFENDANTS.)

MOTION TO AMEND COMPLAINT

Come now the Plaintiffs and move to substitute this Amended Complaint for the Complaint as amended heretofore.

1. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution to the United States, and 42 U.S.C. §1983. Jurisdiction is vested in this Court by 28 U.S.C. §§1331, 1343, 2201 and 2281.

PLAINTIFFS

2. The Holt Civic Club is an unincorporated association of residents of the Holt community in Tuscaloosa County who have joined together to promote the best interests of the Holt community. The Holt Civic Club through the members listed sues on behalf of its members, under the authority of FRCP 23.2.

3. The individual Plaintiffs, Jimmy Clements, Clyde Jones, Herbert Flora, Joe Perkins, Sr., William Gordon, Victoria Harris, Roy Johnson and Donald Lankford, are each (1) members of the Holt Civic Club; (2) residents of Tuscaloosa County, Alabama; (3) residents of the Holt community living outside the City of Tuscaloosa but within [sic] three miles of said city.

4. The named individual Plaintiffs are representative of the class of residents of

Alabama who live outside any incorporated municipality but within the "police jurisdiction" of a city or town. These individuals meet the requirements of Rule 23(a) of the FRCP and this action may be maintained as a class action under paragraph (b)(1) or (b)(2) of said Rule.

DEFENDANTS

5. [Deleted]

6. The City of Tuscaloosa is a municipal corporation organized and operating under the laws of the State of Alabama. C. Snow Hinton, C. Delaine Mountain, and Hilliard Fletcher are the City Commission of Tuscaloosa and therefore combine the legislative and executive functions. Gordon Rosen is the City Recorder for Tuscaloosa and is charged with the duty of judicially administering the ordinances of Tuscaloosa. The City of Tuscaloosa and each named Defendant are sued as representatives of all municipalities, all municipal executives, all municipal legislative bodies, and all municipal judicial officials in the State of Alabama. The prerequisites and requirements of Federal Rules of Civil Procedure 23(a) and (b)(1) or (b)(2) have been met.

FACTS AND CAUSES OF ACTION

7. Alabama Code, Tit. 37, §9, provides that municipalities of six thousand or more inhabitants shall have a police jurisdiction of three (3) miles from its city limits while smaller municipalities shall have a one and a half (1.5) mile police jurisdiction. Police jurisdiction is defined by that section as the area within which the municipality may enforce police or sanitary regulations. Judicial interpretation has added the limitation that no city may exercise police jurisdiction over the territory embraced by the corporate limits or police jurisdiction of another city or town.

8. Alabama Code, Tit. 37, §585, specifically grants a municipal recorder with judicial powers in the police jurisdiction.

9. Alabama Code, Tit. 37, §733, provides for the collection by a municipality of licenses from businesses located within the police jurisdiction.

10. Persons, such as the Plaintiffs, who live outside the limits of a municipality are not allowed to vote in city elections, or participate in or initiate referendum or recall elections.

11. The denial of the right to vote in city elections to persons in police jurisdictions infringes on their constitutional right (under the due process and equal protection clauses) to a voice in their government.

12. Because the police jurisdiction automatically changes when the municipal limits change, residents of unincorporated areas are often thrust into the police jurisdiction of a municipality without their permission and without regard to due process of law.

13. All, or nearly all, of the City of Northport is within three miles of the City of Tuscaloosa. Because the City of Tuscaloosa cannot exercise police jurisdiction over the City of Northport, the residents of the Holt community are denied equal protection of the laws in that they are governed by the City of Tuscaloosa while other citizens who stand in the same political and geographical [sic] relationship to the City of Tuscaloosa are not so governed. Other members of the class face the same problem if they live in an area in which two or more municipalities are close together; for example in the Mobile, Pritchard, or Chickasaw police jurisdictions.

13A. Members of the class of Plaintiffs, including Clyde Jones have been required to purchase business licenses to engage in business within the police jurisdiction.

13B. Members of the class of Plaintiffs, including Clyde Jones and Donald E. Lankford have been required to purchase building permits from the City of Tuscaloosa and submit to inspections of buildings within the police jurisdiction.

13C. Members of the class of Plaintiffs, including Clyde Jones, Roy W. Johnson, Donald E. Lankford, and Herbert Flora, have been required to pay a Tuscaloosa city tax on cigarettes bought within the police jurisdiction.

13D. Members of the class of Plaintiffs, including Roy W. Johnson, have been required to pay a Tuscaloosa city tax on packaged beer bought within the police jurisdiction.

13E. Members of the class of Plaintiffs, including Roy W. Johnson, have been required to pay a higher price on wine or liquor bought for on-premises consumption because of a tax imposed by the City of Tuscaloosa on retailers of wine and liquor in the police jurisdiction.

14. [Deleted]

15. [Deleted]

16. Alabama law requires a taxpayer to receive a rebate of taxes illegally collected only if the taxes were paid under protest. This court has no jurisdiction to enjoin the collection of state or local taxes, but the decision of this suit will affect the legality of such taxes. Therefore, the Plaintiffs request that all taxes, fees, or licenses paid to a municipality by persons in the police jurisdiction be considered to have been paid under protest. Such an order would have no adverse effect upon the Defendants but would preserve the rights of Plaintiffs' class to claim rebates of taxes if they obtain a favorable decision from this court.

RELIEF

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiffs pray this Court to grant the following relief:

A. Certify both the Plaintiffs [sic] and Defendants as proper representatives of their respective classes.

B. Convene a three-judge district court to hear this action.

C. Declare Alabama Code, Tit. 37, §9, to be unconstitutional and enjoin its enforcement or implementation.

D. Declare Alabama Code, Tit. 37, §§585 and 733 to be unconstitutional insofar as they allow the exercise of any municipal power outside the limits of a municipality and enjoin their enforcement or implementation to that extent.

E. Grant a preliminary injunction requiring each member of the Defendant class to consider and hold that all taxes, licenses, and fees collected from persons residing within their respective police jurisdiction on account of activities or conduct in the police jurisdiction were paid under protest of the persons as to the constitutionality of collecting such tax, license, or fee; provided however, that no notice of such consideration of protest shall be required from any party and further provided that this injunction shall not affect the applicable statute of limitations.

F. [Deleted]

G. Grant the Plaintiffs their costs, including a reasonable attorney's fee.

H. Grant such other, further, and different relief as the premises may demand.

Submitted by,

s/ W. E. Still
Drake, Knowles and Still
P. O. Box DK
University, Alabama 35486
ATTORNEYS FOR PLAINTIFFS

(Certificate of Service Omitted in Printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Convened Pursuant to 28 U.S.C. Sec. 2281)

(Title Omitted in) [Filed April 8,
Printing)) 1976]
)
) C.A. 73-M-736

MOTION TO DISMISS

Come now the Defendants and move the Court to dismiss the complaint in this cause on the following grounds:

1. That Title 28 U.S.C. Section 1341 prohibits the Court from asserting jurisdiction of statutes or ordinances providing for the purchase of business licenses, building permits or other types of fees or assessments prescribed pursuant to ordinance.

2. That the complaint alleges neither facts showing a case or controversy nor facts showing a justiciable controversy for declaratory relief other than facts setting up controversies in regard to statutes providing for the levying of taxes or fees which come within the influence of the Tax Injunction

Act of 1937, (Title 28 U.S.C. Section 1341).

3. The complaint fails to state a claim upon which relief can be granted since the allegations of the complaint raise no substantial federal or constitutional question.

s/ J. Wagner Finnell
J. Wagner Finnell
Attorney for Defendants
P.O. Box 2089
Tuscaloosa, Alabama 35401

s/ Glenn N. Baxter
Glenn N. Baxter
Attorney for Defendants
P.O. Box 2089
Tuscaloosa, Alabama 35401

(Certificate of Service Omitted in Printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Title Omitted) C.A. 73-M-736
in Printing))
) Interrogatories Filed
) August 15, 1973
)
) Answers Filed September
) 26, 1973

INTERROGATORIES

Plaintiffs hereby submit the following interrogatories to be answered in accordance with Rule 33, Federal Rules of Civil Procedure.

In these interrogatories, "police jurisdiction" shall mean the territory within three miles of the city limits, outside the city limits, and not within the limits or police jurisdiction of another city.

* * *

[Interrogatory No. 2]

2. Please list the type, rate, and statutory or ordinance authority for each tax, license, fee, or other involuntary contribution collected from residents or businesses located in the police jurisdiction of the City of Tuscaloosa, but outside its limits.

[Answer No. 2]

2. Licenses on businesses conducted in the Police Jurisdiction and outside of the Corporate Limits of the City are set out in

Chapter 3 of Articles II and III, and in Chapter 20 of the Code of Tuscaloosa.

The charge for such licenses or permits are set out in Chapter 20 of said Code and is specified in particular in Section 20-5.

Building inspection fees are set out in Section 10-25 of the Code of Tuscaloosa, the fee being based on the value for cost of the proposed structure.

Electrical inspection fees, as set out in the National Electrical Code, 1971 Edition, and the administrative regulations published therewith, adopted by Section 13-3 of the Code of Tuscaloosa. Fees are based on the number of outlets required to be inspected and the type of electrical installations.

Plumbing inspection fees are set out in Section F. of the Plumbing Code of Tuscaloosa, adopted by Section 25-1 of the Code of Tuscaloosa, and are based on the number of fixtures and type of installations required to be inspected.

Gas fitters inspection fees are set out in Section 25-20 of the Code of Tuscaloosa, and are based on the number of outlets installed and required to be inspected.

* * *

[Interrogatory No. 5]

5. What was the aggregate amount of each license, fee, or tax collected by the City of Tuscaloosa in the last complete fiscal year? What portion of each tax was collected in the police jurisdiction?

[Answer No. 5]

5. Aggregate amount of each license, fee or tax collected by the City of Tuscaloosa in the last fiscal year, together with the portion collected in the Police Jurisdiction and outside of the Corporate Limits, where known, is as follows:

License

Total Privilege License - \$ 1,152,265. Of this \$ 27,985.69 was collected in Police Jurisdiction, or .036% [sic, 2.4%] according to best estimates.

Cigarette Tax - \$ 341,131.00. Of this amount \$ 3,615.99, or .011% [sic, 1.05%], collected in Police Jurisdiction.

Lodging Tax - \$ 18,509.00. Of this amount \$ 3,625.24 was collected in Police Jurisdiction.

Beer Tax - \$ 36,112.94. Of this amount \$ 5,304.77 was collected in Police Jurisdiction.

Inspection Fees - \$ 108,418.00. Of this \$ 27,104.50 was collected from

Police Jurisdiction.

(Year, September 1972 - August 31, 1973).

* * *

[Interrogatory No. 7]

7. Do residents or businesses in the police jurisdiction receive fire protection by the City of Tuscaloosa fire department on an equal basis with residents and businesses in the City? Must they pay a fee for such protection or post a bond to guarantee such a fee?

[Answer No. 7]

7. All businesses or persons paying a privilege license outside of the City and within the Police Jurisdiction received the same fire protection without cost that is afforded to persons living within the Corporate Limits.

Those persons residing outside of the Corporate Limits who do not pay a privilege license or municipal tax are required to pay, or promise to pay, a fee for fire protection services.

* * *

[Interrogatory No. 9]

9. Has any estimate been made by the city planning department, West Alabama Planning and Development Agency, or a similar

organization as to the number of people located within Tuscaloosa's police jurisdiction? If so, what was the estimate, when was it made, and upon what basis was it made?

[Answer No. 9]

9. An estimate prepared by the Tuscaloosa Planning Department is attached hereto as Exhibit "A".

[Exhibit "A"]

MEMO FROM PLANNING DIRECTOR TO
CITY ATTORNEY

September 17, 1973

9. The following estimate of the number of persons living within Tuscaloosa police jurisdiction was prepared by the Tuscaloosa City Planning Department in September, 1973, and was based upon 1970 Census Data as reported in Department of Commerce publication PHC (1) - 220, Census Tracts-Tuscaloosa, Alabama Standard Metropolitan Statistical Area:

Total population for Tuscaloosa County was reported as 116,029, of which 65,773 resided in the City of Tuscaloosa and 9,435 resided in the City of Northport. This left a net population of 40,821 in unincorporated areas of the county. The problem is to determine how many of these 40,821 people lived in Tuscaloosa's police jurisdiction. The enclosed map shows the extent of this

jurisdiction. Unfortunately, census tract boundaries used in the 1970 Census do not coincide in any way with this police jurisdiction boundary. Certain tracts do, however, encompass the most heavily populated portions of the police jurisdiction, including Holt and most of Cottondale. This area is delineated by a green line on the attached map, and includes the unincorporated portions of the following census tracts: 105, 108, 117, 123, and 124. The population contained in these tracts (unincorporated portions only) is recapitulated as follows:

Tract 105	3,155
108	4,897
117	1,453
123	1,157
124	2,325
Total	12,987

The only means available to determine the number of persons outside these tracts (depicted by the green line), but within the police jurisdiction (depicted by the red line) is to estimate this figure, based upon aerial photography and the staff's personal acquaintance with the area. By this means, the staff estimates the population in the remainder of the police jurisdiction at between 3,000 and 4,000 persons. When this estimate is added to the 12,987 persons previously counted, one arrives at a grand total of about

16,000 - 17,000 for the population of Tuscaloosa's police jurisdiction. This figure does not seem unreasonable when checked against the total unincorporated population of 40,821 in the entire county. Accordingly, the staff believes that the above estimate is realistic.

s/ Alvin P. DuPont
Alvin P. DuPont
 PLANNING DIRECTOR

* * *

[Interrogatory No. 11]

11. In your opinion, what useful purpose for the city is served by the existence of the police jurisdiction?

[Answer No. 11]

11. The Police Jurisdiction, as stated by various courts for over one hundred years, and regulations therein are necessary for the protection of lives, health and property of the citizens, the maintenance of good order and quiet of the community, and the preservation of public morals.

In the relative short span of twenty-six (26) years, the City of Tuscaloosa has grown from an area of 6.05 square miles to 34.23 square miles. If the City had failed to enforce its building codes and subdivision regulations within its Police Jurisdiction, there would have been annexed areas replete with substandard structures, defective streets,

and poorly platted subdivisions. Even without considering expansion of the Corporate Limits, we believe the enforcement of municipally adopted regulations within the Police Jurisdiction are justified in terms of its beneficial affect on the qualify of development and, ultimately, the quality of life throughout the metropolitan area. Although fees are charged for the issuance of building permits and the processing of subdivision plats, these fees do not nearly meet the budgetary requirements for these services. The City is, in effect, subsidizing this expense in the interest of the orderly development of the metropolitan area.

The City has no zoning authority outside its Corporate Limits, and this has led to some disorderly development and numerous appeals from citizens living in the Police Jurisdiction for protection against the encroachment of incompatible and noxious land uses adjacent to and near their homes.

In the past several years, the areas subject to the most rapid development are those areas surrounding any municipality. In our opinion, it is certainly necessary for the protection of lives, health, and property of the citizens, and the maintenance of good order and public morale, that this rapidly developing area be subject to some

sort of regulation that is given and has been given for hundreds of years to municipalities in the State of Alabama, and many other states. A City can only exercise those authorities granted to it by the Sovereign State of which all of the residents of the City, as well as residents of its Police Jurisdiction, comprise a part.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Title Omitted in) [Interrogatories Filed
Printing.)) May 13, 1974]
) [Answers Filed June 6,
) 1974]
)
) CA. 73-M-736

SECOND INTERROGATORIES TO DEFENDANT

Plaintiffs hereby submit the following interrogatories to Defendant to be answered in accordance with Rule 33 of the Rules of Civil Procedure. In the interrogatories, "police jurisdiction" shall mean the territory within three miles of the city limits of Tuscaloosa, outside the city limits, and not within the limits or police jurisdiction of another city.

* * *

[Interrogatory No. 5]

Please indicate the name, number of members, tenure, and duties of each board, commission, committee, advisory group or the like appointed by the City Commission or any of its members. For each board, etc., indicate whether any person now serving on such board or who has served on such board within the last ten (10) years was during his/her tenure on such board a non-resident of the City of Tuscaloosa.

[Answer No. 5]

The information called for in this interrogatory is attached hereto as Appendix "A" and by reference incorporated in and made a part hereof.

* * *

[See next page for Appendix "A".]

Appended hereto as Appendix "A" is a list of each Board or Committee, either appointed by the Commission Board of Tuscaloosa or to which certain members are appointed by the Commission Board of Tuscaloosa.

Where an asterisk appears opposite the name of an individual, then that individual resides outside of the Corporate Limits of the City of Tuscaloosa.

ALABAMA JOBS FOR VETERANS TASK FORCE COMMITTEE.

(Appointed May 18, 1971)

Herschel Foster
Kenneth Tucker
Jim Kisgen

(To serve at the pleasure of the Commission Board.)

AREA TRANSPORTATION STUDY
TECHNICAL COORDINATING COMMITTEE

Alvin P. DuPont	E.T. Miller
J. Wagner Finnell	R.A. Cardinal, Jr.
Winston Morris	E.G. Besant
George F. Lamb	Paul Meadows*
B.J. Kemp	Lawrence R. Smith
Gil Frye*	John Skinner*
Gayle Mitchum*	Jimmy Watson
George S. Lawson	Joe Wilkerson*
Tim Parker*	Harvey Edwards, Jr.
Warren Keith	Lewis E. McCray

(Date of expiration of terms not known.)

APPENDIX "A"

CHARITABLE SOLICITATIONS COMMITTEE

(Appointed May 18, 1971 - Ordinance No. 1672)

<u>Name</u>	<u>Term Expires</u>
Dr. Elbert Sparks	May, 1973
Mrs. Ed Ashton	May, 1973
O.W. Stokes	May, 1973
William A. Tate	May, 1974
Walter Oliver	May, 1974
M.T. Ormond	May, 1975
Ronnie Rhodes	May, 1975

CIVIL SERVICE BOARD
(Appointed by Governor)

<u>Name</u>	<u>Term Expires</u>
Sam M. Phelps	1973
Walter B. Lawson	1975
J. Paul Kuykendall	1977

COMMUNITY DEVELOPMENT ACTION COMMITTEE
(Appointed October 5, 1972)

Aaron D. Harris	Jerry Belk
Hugh Stegall	William Marable
A.C. Mullins	B.B. Crosby
Alvin P. DuPont	Joe Mallisham
W.D. Lawley	Ed Rutledge

(Date of expiration of terms not known)

DRUID CITY HOSPITAL BOARD

<u>Name</u>	<u>Term Expires</u>
Chris Kyle	October 31, 1975
Cliff Armstrong	October 31, 1975

TUSCALOOSA CITY BOARD OF EDUCATION

<u>Name</u>	<u>5-year term expiration</u>
Mrs. Charles A. Scott	April, 1977
Dr. W.N. Dansby	April, 1978
Vernon R. Wilson	April, 1974
Thomas E. Snow	April, 1975
Claud A. Morrison	April, 1976

ELECTRICAL EXAMINING BOARD

(Appointed May 1, 1970)

<u>Name</u>	<u>Term Expires</u>
Benny Ramey	May 1, 1976
James Lancaster*	May 1, 1976
Bob Nowlin	May 1, 1976
Wilburn J. Sample	May 1, 1976

(Appointed 11/17/70)

FRIEDMAN HOME BOARD

<u>Name</u>	<u>Term Expires</u>
Miss Esther R. Lustig	Sept. 22, 1968
N.C. Morgan	Sept. 22, 1968
Willis Penfield	Sept. 22, 1968
Mrs. Leslie Dee	Sept. 22, 1969
Paul Guthrie	Sept. 22, 1969
Mrs. Madge Poole	Sept. 22, 1969
Matt Clinton*	Sept. 22, 1970
Mrs. Bernice J. Ehlert	Sept. 22, 1970
Guergen Paepcke	Sept. 22, 1970
Mrs. Lucille C. Sconyers	Sept. 22, 1970
Jake Termerson	Sept. 22, 1970

GREATER TUSCALOOSA PUBLIC STUDY COMMISSION

Jessie L. Anderson	William H. "Bill" Lanford
Fred Baker	George A. LeMaistre
H.B. Barton	Lewis M. Manderson, Jr.
Joe A. Brown	Frank M. Moody
Russell Chappell*	Joe T. Phifer
John C. Duckworth, Jr.	Dwight M. Richardson
T. Gary Fitts	Frank A. Rittenberry
James D. Geer	G. Gragg Robinson
C.A. Fredd, Sr.	W. Aaron Waldrop*
C.J. Hartley	Nora Weaver*
Tennis C. Jackson	Vernon R. Wilson
Daniel G. "Danny" Jones	

(Dates of expiration of terms not known)

INDUSTRIAL DEVELOPMENT BOARD

<u>Name</u>	<u>Term Expires</u>
W. Tandy Barrett	April 1, 1974
Frank M. Moody	April 1, 1974
James E. Money	April 1, 1974
David M. Cochrane	April 1, 1974
Morris Sokol	April 1, 1974
Ernest Williams	April 1, 1974
Dexter D. Hulsart	April 1, 1974
Albert Baernstein	April 1, 1976
Cecil Carver	April 1, 1976
Tom Birdsong	April 1, 1976
A. Clayton Rogers	April 1, 1976
Lawrence R. Smith	April 1, 1976
J.C. Duckworth	April 1, 1976
Aubrey Dominick	April 1, 1978
George Shirley	April 1, 1978
Harry H. Pritchett	April 1, 1978
David G. McGiffert	April 1, 1978
K. Gordan Lawless	April 1, 1978
C.D. Davenport*	April 1, 1978
George LeMaistre*	April 1, 1978
H. Vann Waldrop	
C.J. Hartley	

TUSCALOOSA COUNTY PARK & RECREATION AUTHORITY

<u>Name</u>	<u>Term Expires</u>
Emmett Dendy	November, 1976
Dr. H.W. Savery	November, 1974
Morris Sokol	November, 1975

TUSCALOOSA CITY PLANNING COMMISSION
(6-Year Terms)

<u>Name</u>	<u>Term Expires</u>
Roy Madison	August 1, 1975
William J. Strickland	August 1, 1976
Bruce West	August 1, 1977
Jimmy Watson	August 1, 1978
Warren Keigh	August 1, 1975
Charles A. Snyder	August 1, 1979

C. Snow Hinton	September 30, 1977
C. Delaine Mountain	September 30, 1977
Hilliard Fletcher	September 30, 1977

TUSCALOOSA HOUSING AUTHORITY

<u>Name</u>	<u>Term Expires</u>
Frank M. Moody	March 17, 1970
Dr. Harold Stinson	March 17, 1971
R.H. McConnell	March 17, 1972
Rufus Bealle	March 17, 1973
W. Tandy Barrett	March 17, 1974

TUSCALOOSA COUNTY SPECIAL TAX BOARD

<u>Name</u>	<u>Term Expires</u>
County - Parker Mackey	Jan. 1, 1974
City - Hilliard Fletcher	Jan. 1, 1974
County Bd. of Educ. - Marshall Walker *	Jan. 1, 1974
City Bd. of Educ. - Tom Snow	Jan. 1, 1974
Druid City Hosp. - Henry Hale	Jan. 1, 1974

TUSCALOOSA HISTORICAL - PRESERVATION AUTHORITY
(Appointed May 7, 1970)

Judge John M. Puryear	Marvin Harper
Lewis McCray	Clemson Duckworth
Mrs. James Boone	Jack Warner
Joe Roland	Jim Fitts

ZONING BOARD OF ADJUSTMENT

<u>Name</u>	<u>Term Expires</u>
Gordon Lawless, Chairman	July 28, 1976
Joe Phifer	July 28, 1975
Gary Fitts	July 28, 1976
C.R. Jamison	July 28, 1975
Leroy McAbee	July 28, 1974

Supernumerary Members

William O'Connor	July 28, 1974
Gerald Busby	July 28, 1974

PLUMBING EXAMINING BOARD

John Carlton Dill
W.J. Moses
J.B. Tierce
Ralph Kelley
W.D. Lawley

In general, the duties of each said Board or Committee are as follows:

ALABAMA JOBS FOR VETERANS TASK FORCE

COMMITTEE: To make recommendations and studies which will result in additional employment of Veterans in the public and private sector of the City.

AREA TRANSPORTATION STUDY TECHNICAL

COORDINATING COMMITTEE:

To establish the planning process and adopt a recommended Transportation plan in coordination with the Alabama Highway Department for the City of Tuscaloosa and Tuscaloosa County.

CHARITABLE SOLICITATIONS COMMITTEE:

Duties are assigned by Ordinance No. 1672, which appears in the Code of Tuscaloosa.

CIVIL SERVICE BOARD OF TUSCALOOSA: Duties are prescribed in Act No. 246 of the Local

Acts of Alabama of 1947 Legislature.

COMMUNITY DEVELOPMENT ACTION COMMITTEE:

To advise and assist the governing body in all phases of community development, including health, public safety, recreation and distribution of revenue sharing funds.

DRUID CITY HOSPITAL BOARD: Duty prescribed by applicable law of State Legislature setting up Board.

TUSCALOOSA CITY BOARD OF EDUCATION:

Perform the duties of a City Board of Education as prescribed by State Law.

ELECTRICAL EXAMINING BOARD: To make recommendations in regard to the Electrical Code of Tuscaloosa, and to conduct examinations for certifying electricians.

FRIEDMAN HOME BOARD: To serve in the preservation and development of the Friedman Home; to supervise the use of the property as well as the furnishing, equipping, and upkeep of the same.

GREATER TUSCALOOSA PUBLIC STUDY COMMISSION: To make recommendations to the Commission Board as to the orderly development, expansion, and growth of the municipality, and recommendations for the betterment in the quality of life in the City of Tuscaloosa and the Greater Tuscaloosa area.

INDUSTRIAL DEVELOPMENT BOARD: To perform the duties of industrial development pursuant to the provisions of the Wallace and Cater Acts of the State of Alabama.

TUSCALOOSA COUNTY PARK AND RECREATION

AUTHORITY: The City furnishes members of this authority, others being appointed by Tuscaloosa County Commission and City of Northport. Duties as prescribed by State Law include the furnishing of public recreation to all citizens of Tuscaloosa County.

TUSCALOOSA CITY PLANNING COMMISSION:

To supervise zoning within the Corporate Limits and the orderly development of subdivisions and Master Plans for development for the City of Tuscaloosa and the area in its Police Jurisdiction.

TUSCALOOSA HOUSING AUTHORITY: Administer public housing as provided by law.

TUSCALOOSA COUNTY SPECIAL TAX BOARD:

The City furnishes one member of this Board to administer County-wide sales tax.

TUSCALOOSA HISTORICAL PRESERVATION

AUTHORITY: Duties prescribed by State Law to foster and preserve sites of historic value in the City and County.

ZONING BOARD OF ADJUSTMENT: To hear and pass on requests for variances to the Zoning Ordinance of the City of Tuscaloosa within its Corporate Limits.

PLUMBING EXAMINING BOARD: To make recommendations as to ordinances to be included in the Plumbing Code and to conduct examinations to determine the qualification and certification of qualified or certified plumbers.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Title Omitted) [Interrogatories
in Printing)) Filed January 29,
) 1976]
) [Answers Filed
) March 28, 1978]
)
) CA 73-M-736

PLAINTIFFS' THIRD INTERROGATORIES

Plaintiffs present the following interrogatories to be answered in compliance with Civil Rule 33.

1. What was the aggregate amount of each license, fee, or tax collected by the City of Tuscaloosa in the fiscal years 1974 and 1975? What portion of each tax was collected in the police jurisdiction?

[Answer No. 1]

1. For the year 1975 the aggregate of each license and the amount collected in the police jurisdiction is as follows:

<u>Type of License</u>	<u>Total</u>	<u>Police Jurisdiction</u>
General business license	\$1,618,042	\$39,907
License Tax - Beer	108,150	9,161
License Tax - Liquor	54,316	9,491
License Tax - Lodging	26,037	2,974
License Tax - Cigarettes	388,696	58,869

(The cigarette license tax is estimated based on the sale of either 5¢ of 2.5¢ stamps and may be inaccurate since a dealer may use two 2.5¢ stamps instead of the 5¢ stamp.)

For the tax year 1974:

<u>Type of license</u>	<u>Total</u>	<u>Police Jurisdiction</u>
General business	\$1,541,312	
License Tax - Beer	21,000	
License Tax - Liquor	3,265	
License Tax - Lodging	21,381	
License Tax - Cigarettes	371,189	

Our records do not reflect the exact amount of sales in the police jurisdiction, but using the same ratio for the general business license, we would estimate that \$38,378.00 was collected from the police jurisdiction. On the cigarette tax we estimate that \$37,118.90 was collected in the police jurisdiction. On the lodging tax we estimate that \$1,069.05 was collected in the police jurisdiction.

Estimates on beer tax and liquor tax are not made and not available for the year 1974.

Our building permit fees for the year 1974 (calendar year):
TOTAL: \$97,689.72

POLICE JURISDICTION: \$10,394.62

1975 (calendar year)

TOTAL: \$108,230.81

POLICE JURISDICTION: \$10,917.32

Garbage collection fees:

TOTAL - 1974: \$713,204.00

TOTAL - 1975: \$1,054,369.00

(No collection in police jurisdiction)

Milk inspection fees:

TOTAL - 1974: \$6,000.00

TOTAL - 1975: 6,000.00

(No collection in police jurisdiction)

* * *

[Interrogatory No. 3]

3. Please supplement your response to Question 5 of Plaintiffs' Second Interrogatories to Defendant by bringing each list up to date.

[Answer No. 3]

3. See attached list.

[The following is the list referred to in Answer No. 3.]

Appended hereto as Appendix "A" is a list of each Board or Committee, either appointed by the Commission Board of Tuscaloosa or to which certain members are appointed by the Commission Board of Tuscaloosa.

Where an asterisk appears opposite the name of an individual, then that individual

resides outside of the Corporate Limits of the City of Tuscaloosa.

ALABAMA JOBS FOR VETERANS TASK
FORCE COMMITTEE

(Appointed May 18, 1971)

Herschel Foster
Kenneth Tucker
Jim Kisgen

(To serve at the pleasure of the Commission Board.)

AREA TRANSPORTATION STUDY
TECHNICAL COORDINATING COMMITTEE

Alvin P. DuPont	E.T. Miller
Winston Morris	R.A. Cardinal, Jr.
J. Wagner Finnell	E.G. Besant
George F. Lamb	Paul Meadows*
B.J. Kemp	Lawrence R. Smith
Gil Frye*	John Skinner*
Gayle Mitchum*	Jimmy Watson
George S. Lawson	Joe Wilkerson*
Tim Parker*	Harvey Edwards, Jr.
Warren Keith	Lewis E. McCray

(Date of expiration of terms not known.)

CHARITABLE SOLICITATIONS COMMITTEE
(Appointed May 18, 1971 - Ordinance No. 1672)

<u>Name</u>	<u>Term Expires</u>
Dr. Elbert Sparks	May, 1976
Mrs. Oviatt Bowers	May, 1978
Harlan C. Meredith	May, 1978
William A. Tate, Chairman	May, 1977
Walter Oliver	May, 1977
Ronnie Rhodes	May, 1978
Richard Hackendahe	May, 1976

CIVIL SERVICE BOARD
(Appointed by Governor)

<u>Name</u>	<u>Term Expires</u>
Sam M. Phelps	1979
Walter B. Lawson	1981
J. Paul Kuykendall	1977

COMMUNITY DEVELOPMENT ACTION
COMMITTEE
(Appointed October 5, 1972)

Aaron D. Harris	Jerry Belk
Hugh Stegall	William Marable
A.C. Mullins	B.B. Crosby
Alvin P. DuPont	Joe Mallisham
W.D. Lawley	Ed Rutledge

(Date of expiration of terms not known.)

DRUID CITY HOSPITAL BOARD

<u>Name</u>	<u>Term Expires</u>
Chris Kyle (Reappointed 3/16/76)	October 31, 1978
Lloyd Wood (Appointed 3/16/76)	October 31, 1978

TUSCALOOSA CITY BOARD OF EDUCATION

<u>Name</u>	<u>5-year term expiration</u>
Mrs. Charles A. Scott	April, 1977
Dr. W.N. Dansby	April, 1978
Vernon R. Wilson	April, 1979
Claud A. Morrison	April, 1976
Mrs. Emily Barrett	April, 1979
John Hogue	April, 1979
William H. Lawford	April, 1980

ELECTRICAL EXAMINING BOARD
(Appointed May 1, 1970)

<u>Name</u>	<u>Term Expires</u>
Benny Ramey	May 1, 1976
James Lancaster*	May 1, 1976
Bob Nowlin	May 1, 1976
Wilburn J. Sample	
(Appointed 11/17/70)	May 1, 1976

FRIEDMAN HOME BOARD

<u>Name</u>	<u>Term Expires</u>
Miss Esther R. Lustig	Sept. 22, 1968
N.C. Morgan	Sept. 22, 1968
Willis Penfield	Sept. 22, 1968
Mrs. Leslie Dee	Sept. 22, 1969
Paul Guthrie	Sept. 22, 1969
Mrs. Madge Poole	Sept. 22, 1969
Matt Clinton*	Sept. 22, 1970
Mrs. Bernice J. Ehlert	Sept. 22, 1970
Guerger Paepcke	Sept. 22, 1970
Mrs. Lucille C. Sconyers	Sept. 22, 1970
Jake Temerson	Sept. 22, 1970

GREATER TUSCALOOSA PUBLIC STUDY
COMMISSION

Jessie L. Anderson	William H. "Bill" Lanford
Fred Baker	Lewis M. Manderson, Jr.
H.B. Barton	Frank M. Moody
Joe A. Brown	Joe T. Phiher
Russell Chappell*	Dwight M. Richardson
John C. Duckworth, Jr.	Frank A. Rittenberry
T. Gary Fitts	G. Gragg Robinson
James D. Geer	W. Aaron Waldrop*
C.A. Fredd, Sr.	Nora Weaver
C.J. Hartley	Vernon R. Wilson
Tennis C. Jackson	
Daniel G. "Danny" Jones	

(Date of expiration of terms not known)

INDUSTRIAL DEVELOPMENT BOARD

<u>Name</u>	<u>Term Expires</u>
W. Tandy Barrett	April 1, 1980
Frank M. Moody	April 1, 1980
James E. Money	April 1, 1980
Morris Sokol	April 1, 1980
Ernest Williams	April 1, 1980
Albert Baernstein	April 1, 1976
Cecil Carver	April 1, 1976
Tom Birdsong	April 1, 1976
A. Clayton Rogers	April 1, 1976
Aubrey Dominick	April 1, 1978
K. Gordon Lawless	April 1, 1978
H. Vann Waldrop	April 1, 1978

TUSCALOOSA COUNTY PARK & RECREATION AUTHORITY

<u>Name</u>	<u>Term Expires</u>
Emmett Dendy	November, 1976
Morris Sokol	November, 1978
Mrs. Willie B. Palmer	November, 1977

TUSCALOOSA CITY PLANNING COMMISSION
(6-Year Terms)

<u>Name</u>	<u>Term Expires</u>
Roy Madison	August 1, 1975
William J. Strickland	August 1, 1976
Bruce West	August 1, 1977
Jimmy Watson	August 1, 1978
Warren Keith	August 1, 1975
C. Snow Hinton	September 30, 1977
C. Delaine Mountain	September 30, 1977
Hilliard Fletcher	September 30, 1977
Thomas Jefferson	August 1, 1979

TUSCALOOSA HOUSING AUTHORITY

<u>Name</u>	<u>Term Expires</u>
Dr. Harold Stinson	March 15, 1971
R.H. McConnell	March 15, 1972
Rufus Bealle	March 15, 1973
Harold G. McAbee	March 15, 1979
James E. Albright	December 23, 1980

TUSCALOOSA COUNTY SPECIAL TAX BOARD

<u>Name</u>	<u>Term Expires</u>
County-Parker Mackey	January 1, 1978
City-Hilliard Fletcher	January 1, 1978
County Bd. of Educ. - Marshall Walker*	January 1, 1978
City Bd. of Educ. - John Hogue	January 1, 1978
Druid City Hosp. - Leslie Smith	January 1, 1978

TUSCALOOSA HISTORICAL-PRESERVATION AUTHORITY
(Appointed May 7, 1970)

Judge John M. Puryear (until succeeded)	Marvin Harper (until succeeded)
Lewis McCray (until succeeded)	Clemson Duckworth (January 1, 1975)
Mrs. James Boone (January 1, 1977)	Jack Warner (January 1, 1978)
Joe Roland (until succeeded)	Jim Fitts (January 1, 1976)

ZONING BOARD OF ADJUSTMENT

<u>Name</u>	<u>Term Expires</u>
Gordon Lawless, Chairman	July 28, 1976
Gary Fitts	July 28, 1976
Leroy McAbee	July 28, 1977
William P. Gray, Jr. (Joe Phifer)	July 28, 1978

Supernumerary Members

Sue Thompson	July 28, 1977
Gerald Busby	July 28, 1977

PLUMBING EXAMINING BOARD

John Carlton Dill	May 1, 1976
Q.J. Moses	May 1, 1976
J.B. Tierce	May 1, 1976
Ralph Kelley	May 1, 1976
W.D. Lawley	May 1, 1976

[The balance of answer, being a description of the duties of each Board or Committee, is identical to the description in Defendants' Answer No. 5 to the Second Interrogatories of Plaintiffs, supra, at 29.]

* * *

[Interrogatory No. 5]

5. During the fiscal years 1973, 1974, and 1975, what was the total number of building permits issued by the City of Tuscaloosa? How many of these were for buildings then located in the police jurisdiction?

[Answer No. 5]

5. Total number of building permits issued by the City of Tuscaloosa were as follows:

	<u>TOTAL</u>	<u>POLICE JURISDICTION</u>
Calendar year 1973	1,091	130
Calendar year 1974	804	129
Calendar year 1975	1,021	153

* * *

OPINION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
June 7, 1977

This opinion is found in the jurisdictional statement appendix beginning at page 1a.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Title Omitted) [Filed June 17,
in Printing)) 1977]
)
)
) CA 73-M-736

PLAINTIFFS' MOTION TO RECONSIDER

Come now the plaintiffs and move the Court to reconsider its judgment dismissing the equal protection and due process claims of plaintiffs and show the following grounds:

1. The Court noted that the present case is similar to Little Thunder v. South Dakota, 518 F.2d 1253 (8th Cir. 1975), except that the relief sought is different. Little Thunder plaintiffs and Holt plaintiffs complain of the same constitutional violation: governance by a popularly elected government that excludes them from the electorate. The Little Thunder plaintiffs asked the Court for one type of relief (that they be included in the electorate) while the Holt plaintiffs asked for a different type of relief (that the illegal government be withdrawn from them). The Little Thunder plaintiffs had little choice: if they asked to have the county government not govern them then they would

be left without government services. The Holt plaintiffs have no such problem: the absence of the Tuscaloosa city government will leave them under the sole control of the county government. This Court has erred by dismissing the plaintiffs' complaint.

2. The Court should allow the plaintiffs the option of amending their complaint to ask that they be allowed to participate in Tuscaloosa City elections, if this Court holds that that is the only relief they may seek. Floyd v. Trice, 490 F.2d 1154 (8th Cir. 1974).

3. The Court dismissed the due process claims but allowed the plaintiffs to amend their complaint to specify the ordinances which deny them due process. Plaintiffs contend that they are denied due process not by ordinances but by the passage of those ordinances by a government from which they are excluded and/or by their inclusion in the police jurisdiction at elections (which annex territory to the city) at which they are denied a vote.

4. The Court of Appeals found that the Complaint in this action presented a substantial question as to the validity of the statute under the Constitution. This Court has now dismissed the Complaint under a Rule 12(b)(6) motion to dismiss for failure to

state a claim. Plaintiffs aver that the "law of the case" is that the Complaint is sufficient.

SUBMITTED BY:

s/ Ed Still

Edward Still
601 Title Building
Birmingham, AL 35203
205/322-1695

* * *

OPINION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
July 14, 1977

This opinion is found in the jurisdictional statement appendix beginning at page 4a.

* * *